

20 January 1998

Re: NEPA Technical Inquiry 0224 - Fence Across a Wetland

Dear NEPA Call-In User:

This letter is in response to your January 7, 1998 request for information on constructing a security fence for a U.S. border patrol sector headquarters. The fence may cross wetlands located at the site. Specifically, you would like to know if there are any rules or regulations that would prohibit you from constructing a security fence across a wetland. You did not have information on the specifics of the type of fencing that will be used at this time, but stated it will likely be eight feet tall with razor wire on top.

#### SUMMARY OF FINDINGS

NEPA Call-In found that if construction of the fence will result in discharge of fill material into the wetland, you are required to coordinate with the U.S. Army Corp of Engineers (ACE) prior to construction. Based on the specifics of the construction project, you may be required to obtain a Clean Water Act (CWA) Section 404 permit from the ACE. We are enclosing the NEPA Call-In fact sheet, "Wetlands Protection," December 1996, for your reference. Our detailed findings are provided below.

#### DETAILED FINDINGS

NEPA Call-In contacted Mr. Tom Muller, Branch Chief, Regulatory Branch, ACE, Seattle District, (206) 764-3690, for information on the construction of a fence across a wetland. Mr. Muller stated that if construction of the fence involves the discharge of fill material into the wetland, the construction will require pre-coordination with the ACE. Mr. Muller further stated that the placement of concrete to secure the fence, construction of a temporary road to build the fence, or any other activity which discharges fill material into the wetland may require a permit under Section 404 of the CWA. The Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into Waters of the United States, including wetlands. Individual permits (which involve public notice, commenting, and ACE evaluation) are required for potentially significant impacts. Mr. Muller stated you may not need an individual permit if your activity will have only minor impacts. If your construction project will have only minor impacts, it may qualify for a nationwide permit, which streamlines the approval process.

Because you do not know the specifics of the construction project, Mr. Muller can not determine what type of permit you will need, if any. Mr. Muller stated you should contact Mr. Bob Martin, Section Chief, Regulatory Branch, ACE, Seattle District, (206) 764-6900, when you know the specifics of the construction project, and he can determine if you will need a permit, and if so, what type.

Finally, we are enclosing the NEPA Call-In fact sheet, "Wetlands Protection," December 1996. This fact sheet provides an overview of the laws, regulations, and executive orders that have been enacted to protect wetlands; describes common features and types of wetlands; and details the important role wetlands play in ecosystems.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher